

PC18016 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Bryans et al.

APPLICATION NO.: 09/889,465

FILING DATE: 7/17/2001

BRANCHED CHAIN AMINO ACID-DEPENDENT
AMINOTRANSFERASE INHIBITORS AND THEIR USE IN
THE TREATMENT OF DIABETIC RETINOPATHY

Examiner: Killos, P.
Group Art Unit: 1625

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. §1.182 FOR
WITHDRAWAL OF NON-EXTENDABLE DEADLINE REQUIREMENT**

This Petition is submitted together with Applicants' response to the Notice to File Corrected Application Papers mailed April 27 2005 in the above-captioned international application. Applicants respectfully petition for withdrawal of the 30-day non-extendable deadline requirement to respond to the Notice. The Notice, which was mailed more than 9 months after the payment of the issue fee, stated that the "Structure on bottom of page 89 is missing data", and provided a non-extendable 30 day deadline to correct the informality.

Applicants respectfully submit that the non-extendable deadline is inappropriate in view of the provisions of 37 CFR 1.136(a) and (b), which allow for extensions of time. The Notice states that the period for reply is not extendable under 37 CFR 1.136(a) or (b), but does not provide a reason therefor. Although the Notice does not explicitly state the reason, it appears that the Notice is relying on 37 CFR 1.136, which governs the Periods of Time for certain actions after a Notice of Allowability is sent. In particular, 1.136(c) states that the following time periods are not extendable if set

"in an Office action having a mail date on or after the mail date of the Notice of Allowability:

- (1) The period for submitting an oath or declaration in compliance with § 1.63;
- (2) The period for submitting formal drawings set under § 1.85(c); and
- (3) The period for making a deposit set under § 1.809(c)."

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However, the provisions of 1.136(c) do not apply in this instance. To begin with, it is evident that (1) and (3) do not apply. As for 1.136(c)(2), which governs the period for submitting formal drawings under 1.85(c), Applicants point out that

(A) the structure at the bottom of page 89 was not identified as a "Drawing" anywhere in the application and is not a "Drawing" within the meaning of 37 CFR 1.85. Indeed, the application has a "Description of the Drawings" section, none of which refers to the structure of page 89;

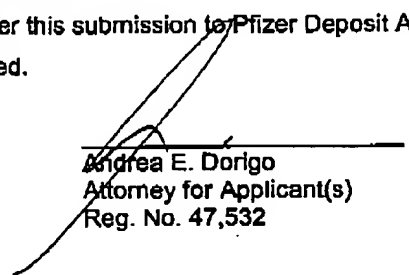
(B) even if one were to assume, *arguendo*, that the structure is a "Drawing", the time period under 1.85(c) is of three months, not one month;

(C) however, even the three month period could not have been met by applicants in this case, since the telephone numbers of the signatory of the Notice (whose signed name cannot be identified by Applicants' undersigned attorney), of the application's Examiner, and of the Examiner's Supervisor were all (!) unreachable, and possibly disconnected (since they were all 703 area code numbers). In this regard, Applicants' undersigned attorney respectfully submits that he attempted to contact all three of the above at their respective numbers before the three-month date (July 27, 2005), but was unsuccessful in doing so. Applicants' attorney further submits that he discovered before July 27, 2005, from inspection of the USPTO Web Site, that both the Examiner and the Examiner's Supervisor are no longer listed as employees of the USPTO. However, Applicants' was not notified of which Examiner is now responsible for this case. In this regard, Applicants' attorney's voice mails to Art Unit 1625 have not yet been returned.

In view of the foregoing, it is respectfully submitted that the requirement for a non-extendable deadline is inappropriate and should be withdrawn. Accordingly, Applicants respectfully request that Applicants' response to the Notice, which accompanies this Petition, be deemed timely filed, and that the Application be allowed to issue.

Please charge any appropriate fee to cover this submission to Pfizer Deposit Account No. 16-1445. A duplicate copy of this sheet is enclosed.

Date: August 16, 2005


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